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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,144	03/30/2001	Christopher T. Garrad	PPC-780	8686
27777	7590	10/31/2005		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TALH

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/823,144	GARRAD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-15,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-15,20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3-31-01&8-29-05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/03 &amp; 1/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-29-05 has been entered as indicated infra.

### ***Specification***

#### ***Drawings***

2. The drawings were received on 8-29-05. These drawings are not approved by the Examiner or the Draftsman. See the attached PTO-948. Furthermore, Figure 10 as proposed does not show a thong shaped panty liner as shown in the originally filed Figures but now showing it with layers.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 1-6, 9-15 and 20-21, e.g. where is the transfer layer? Where is the wing as claimed in combination with the layer portion and silhouette as claimed? Where are the layers of the wing? The "garment attachment means"? The "absorbent article attachment means"? must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### *Description*

4. The amendments to the specification on pages 6-8 of the 8-29-05 response have not been entered since they do not comply with 37 CFR 1.121. For example, the amendments to the paragraphs at page 3, lines 4 and 12, page 9, line 4, page 11, and page 12 do not show the changes made to the last known text. Also, page 8 includes part of one of the marked up versions of the abstract.

5. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention as claimed

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are still not commensurate in scope, e.g. on page 3, lines 22-25, where is the article described as a thong pantiliner? Is line 24 missing a word after "attachment"? 2) In the amendment to page 2, line 24, line 1 thereof seems to be missing a word or words.

Appropriate correction is required.

### ***Claim Language Interpretation***

6. It is noted that Applicants have not provided any specific definition for any of the claim terminology. Therefore, the ordinary meaning, i.e. dictionary definition, is considered to apply to such terminology. Applicant is considered to invoke 35 USC 112, sixth paragraph, in claims 5-8, see lines 3-5 of claim 5. When invoking such, Applicant must disclose corresponding structure in the specification in a way that one skilled in the art will understand what structure will perform the recited function. While one skilled in the art would recognize that the structure set forth in the paragraph on page 11, line 21, as amended 4-7-03, lines 5-7 and 13 thereof performs the function recited in the claims of the garment attachment means and the absorbent article attachment means, it is suggested that the written description be amended to explicitly state such, provided no new matter is introduced. It is further noted that claims 1-4, 13-15 and claims 9-12 and 20-21 do not require the first and second end portions as now claimed to be front and rear end portions, respectively, or vice versa. It is also noted that claims 6 and 10 are considered product by process claims since the claims do not clearly set forth when such is dispensed or claim the roll as part of the pantiliner or kit.

***Claim Objections***

7. Claims 2-4, 6, 10-15 and 20-21 are objected to because of the following informalities: in claims 2-4, 6, 10-15 and 20-21, line 1, "A" or "An" should be --The--. It is also noted that in the last two lines of claim 9, "(a)" and "(b)" should not include any underlining to be in compliance with 37 CFR 1.121. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Maulhardt, DE '026. See Figures, especially Figure 3. The wing is 6, the upper surface of which is cover 10 and an adhesive layer 12 and the lower surface of which is adhesive layers 14. See also page 5, second full paragraph and page 9, lines 1-3 of the translation. Considering claim 5, lines 3-5 as invoking 112, sixth paragraph, the means plus function language is construed to encompass the corresponding structure, material or acts described in the specification and equivalents thereof. Applicant claims means for attaching the wing to the absorbent article, i.e. thong pantiliner, and means for securing the wing to a garment. The corresponding structure, material or acts in the written disclosure necessary to perform that function as one skilled in the art would understand is set forth in the paragraph bridging pages 11-12 as amended 4-7-03, e.g. adhesive acts as both the means. The Maulhardt device as discussed above also uses adhesive to attach a wing-like element to an absorbent article and also to secure such to a garment. Therefore, the adhesive of Maulhardt is at least a structural equivalent of the claimed means, see MPEP 2183, and

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Maulhardt thereby anticipates the means plus function limitations of claim 5, lines 3-5. Claim 5, line 1 also recites capability or function, i.e. capability of securement of a thong pantliner to a garment. However, see discussion supra, since the Maulhardt device includes all the claimed structure, there is reasonable factual basis to for one to conclude that the function and capability of such structure would also be inherent in the same structure of Maulhardt. See MPEP 2112.01. Claim 6 is considered a product by process claim, i.e. claims the wing is dispensed from a roll, see also Claim Language Interpretation section supra, and also note the invention is a wing not a method of dispensing a wing nor a roll of wings. Patentability of product by process claims is based on the end product itself not the method of production. In the instant case the end product is an attachment wing. The end product of Maulhardt, i.e. an attachment wing, is the same and thus the claim is unpatentable even if the product is made by a different process. See MPEP 2113.

### ***Claim Rejections - 35 USC § 102/103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1-4 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammons et al '484, and thereby Mattingly '047, alone, or in the alternative, under 35 USC 103(a) as being unpatentable over Hammons et al '484 in view of Sneider '491, Robiano DE '628, Noel '458 and Whitehead et al '490.

With respect to claims 1, 3-4 and 13-15 and Hammons '484, the first portion is 42 or 44, the second portions is the other of 42 or 44, the edges are adjacent 161 and 160 in Figure 41, the

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core is 24, see paragraph 65, the back sheet is 26, see paragraph 64, the cover is 22, see paragraph 68, the transfer sheet is disclosed in paragraph 77, the wing is 34 or 36 (It is noted that it is not required that the wing extend directly from and releaseably attach directly to the edge), and releasable attachment of the wing is disclosed, e.g., in paragraphs 160-164. Furthermore it is the Examiner's first position that paragraph 85 and thus, Mattingly '047, i.e. its Figures, incorporated thereby, teaches one of the end portions having a maximum width greater than that of the other end portion, i.e. the pantiliner is asymmetrical about the transverse centerline, as now claimed. In any case, the Examiner's second position, note paragraphs 66 and 73 and the Figures of Hammons as well as Sneider at Figures 1 and 3, Robiano at Figures 3 and 5, Noel at col. 6, lines 3-12 and 46-54 and Figures and Whitehead et al at Figures 1-2, i.e. interchangeability of asymmetrical shape, e.g. pear (thong) shape, as claimed, for any other shape, e.g. symmetrical shapes, e.g. oval or hourglass shape. Therefore to make the shape of the pantiliner of Hammons et al one in which the maximum width of one end portion is greater than that of the other end portion (if not already) would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Sneider, Robiano, Noel and Whitehead et al. With regard to claim 2, this claim is a product by process claim. See discussion of claim 6 supra which discussion also applies here, i.e. if the process is not already disclosed by Hammons, see, e.g. paragraph 162 thereof, since end product of Hammons et al, i.e. a pantiliner, is the same as in the instant claim 2, the claim is unpatentable even if the product is made by a different process. See MPEP 2113. It is further noted that the claims 1, 3-4 and 14-15 are broad enough that it reads on Hammons et al without the flap severance feature because the flap 34 is releaseably attached to the side edge adjacent flap 36 by fasteners 52, 54 and flap 36. With regard to claim 13, at the



very least, the perforation 160 is between flap 36 and the edge adjacent flap 34 so severance along line 160 would not only release flap 34 but also flap 36 from that edge. Also it is noted that Hammons et al at Figure 42 and paragraphs 165-168 teaches a connector piece which could be considered an attachment wing combined in a package with a plurality of napkins.

12. Claims 9-12 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bien '929, and thereby Mattingly '047 and Osborn '264, alone, or in the alternative, under 35 USC 103(a) as being unpatentable over Hammons et al '484 in view of Sneider '491, Robiano DE '628, Noel '458 and Whitehead et al '490.

With regard to Bien '929, see Figures, the first end portion is adjacent one of the ends, the second end portion is adjacent the other of the end portions, the edges are 22, the core is 32, see col. 4, line 22, the back sheet is 30, see col. 4, lines 60-65, the cover is 28, the transfer sheet is disclosed at col. 8, lines 25-28 which incorporates Osborn '264, and thus col. 8, lines 16-56 thereof, and the wing is the flap disclosed at col. 7, line 29-col. 8, line 16. Furthermore, it is the Examiner's first position that such col. 7, line 29-col. 8, line 16, and thus, Mattingly '047, i.e. its Figures, incorporated thereby, teaches one of the end portions having a maximum width greater than that of the other end portion, i.e. the pantiliner is asymmetrical about the transverse centerline, as now claimed. In any case, the Examiner's second position, note col. 5, line 66 and col. 4, lines 16-17 and the Figures of Bien as well as Sneider at Figures 1 and 3, Robiano at Figures 3 and 5, Noel at col. 6, lines 3-12 and 46-54 and Figures and Whitehead et al at Figures 1-2, i.e. interchangeability of asymmetrical shape, e.g. pear (thong) shape, as claimed, for any other shape, e.g. symmetrical shapes, e.g. oval or hourglass shape. Therefore to make the shape of the pantiliner of Bien one in which the maximum width of one end portion is greater than that

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of the other end portion (if not already) would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Sneider, Robiano, Noel and Whitehead et al. With regard to the preambles of the claims, a "kit" for an absorbent article is claimed. The structure of the kit claimed is taught by Bien. It is also noted that the term "kit" does not further distinguish such structure of the claims. "Kit" as defined by the American Heritage Dictionary is "a set of articles used for a specific purpose". The purpose set forth is "for an absorbent article". Bien teaches a set of articles or elements used for the specific purpose of an absorbent article, i.e. a "kit for an absorbent article". It is noted claims 9-12 do not recite perforations. With regard to claim 10, this claim, like claims 2 and 6 discussed supra, is a product by process claim. Patentability of such claim is based on the end product itself not the method of production. The product of Bien is the same as in the instant claim 10 and thus the claim is unpatentable even if the product is made by a different process. See MPEP 2113.

### ***Claim Rejections - 35 USC § 103***

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claims 1-4 and 13-14 are rejected under 35 USC 103(a) as being unpatentable over Clark et al '137 in view of Sneider '491, Robiano DE '628, Noel et al '458 and Whitehead et al '490.

With regard to Clark et al, the first portion and second portion are disclosed at col. 4, lines 47-50, the edges are edges of at least one upper pad 50 adjacent 51 as seen in Figure 5, the layered portion is one of the upper pads 50 wherein the core is 24, see col. 5, lines 53-55 and col.

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6, line 13, the back sheet is 26, the cover or transfer layer is 22, the wing is at the very least 51 and at the most the entire lower pad 50, releasable attachment of the wing is disclosed at col. 8, line 23-col. 12, line 48, i.e. the attachment means allows releasable attachment of the wing 51 to the uppermost pad 50 or the middle pad 50. Therefore the Clark et al patent clearly discloses all the claimed structure of claims 1, 3-4 and 13-14 except one of the end portions having a maximum width greater than that of the other end portion, i.e. the pantiliner is asymmetrical about the transverse centerline. However, note again col. 4, lines 47-50 and the Figures of Clark et al as well as Sneider at Figures 1-3, Robiano at Figures 3-5, Noel at col. 6, lines 3-12 and 46-54 and Figures and Whitehead et al at Figures 1-2, i.e. interchangeability of asymmetrical shape, e.g. pear (thong) shape, as claimed, for any other shape, e.g. symmetrical shapes, e.g. oval or hourglass shape. Therefore to make the shape of the pantiliner of Clark et al one in which the maximum width of one end portion is greater than that of the other end portion (if not already) would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Sneider, Robiano, Noel and Whitehead et al. With regard to claim 2, this claim is a product by process claim. See discussion of claim 6 supra which discussion also applies here, i.e. if the process is not already disclosed by Clark, see, e.g., portions cited supra, since patentability is based on the end product itself not the method of production, the end product of Clark et al, i.e. a pantiliner, is the same in the instant claim 2 and thus the claim is unpatentable even if the product is made by a different process. See MPEP 2113. With regard to claim 13, it is noted that each wing is attached to and extends from each edge, i.e. directly or indirectly. Thus the perforations adjacent one flap are between the other flap and that edge and that edge is released from the other flap by such perforations.

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15. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al , Sneider, Robiano, Noel and Whitehead as applied to claim 1 above, and further in view of Bien '929.

Applicants claim the pantiliner having a breathable backsheet. While Clark et al teaches a backsheet such is not disclosed as breathable but is disclosed at col. 8, lines 13-14 as being any film useful in the art. See col. 4, lines 43-65 of Bien, i.e. a backsheet of plastic film which is breathable and is useful in the art. To make the backsheet of Clark et al breathable as taught by Bien would be obvious to one of ordinary skill in the art in view of the recognition that such is a plastic barrier film useful in the art and the desire of Clark et al to employ such a film.

#### ***Response to Arguments***


16. Applicant's remarks have been considered but are either deemed moot in that the issue argued has not been reraised or deemed not persuasive for the reasons set forth supra. Specifically with regard to the prior art rejections, Applicant's remarks are narrower than the teachings of the prior art and/or the claim language. For example, contrary to Applicants arguments claim 5 does not require a thong pantiliner. As best understood such claim requires a wing for attaching a thong pantiliner to a garment, i.e. capability or function. For another example the prior art as applied supra clearly teaches the claimed shape of the end portions.

*Conclusion*

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
October 18, 2005